

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 36780

PATRICK K. KNIGHT,)	2010 Unpublished Opinion No. 358
)	
Petitioner-Appellant,)	Filed: February 24, 2010
)	
v.)	Stephen W. Kenyon, Clerk
)	
BRENT PACKER, CINDI McGUIRE,)	THIS IS AN UNPUBLISHED
IDAHO COMMISSION OF PARDONS AND)	OPINION AND SHALL NOT
PAROLE,)	BE CITED AS AUTHORITY
)	
Respondents.)	
)	

Appeal from the District Court of the Second Judicial District, State of Idaho, Clearwater County. Hon. John H. Bradbury, District Judge. Hon. Randall W. Robinson, Magistrate.

Order of the district court, on appeal from the magistrate division, affirming order dismissing petition for writ of habeas corpus, affirmed.

Patrick K. Knight, Boise, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Paul R. Panther, Deputy Attorney General, Boise, for respondent.

MELANSON, Judge

Patrick K. Knight appeals from the district court's intermediate appellate decision, affirming the magistrate's dismissal of Knight's petition for writ of habeas corpus. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

Knight was convicted of robbery in 1987 and sentenced to an indeterminate term of eighteen years. This Court vacated Knight's sentence and remanded for the district court to impose a sentence that complied with I.C. § 19-2513 requiring the district court to specify a fixed and an indeterminate portion to Knight's sentence. *See State v. Knight*, 114 Idaho 923, 726 P.2d 836 (Ct. App. 1988). On remand, the district court sentenced Knight to a unified term of

eighteen years, with a minimum period of confinement of six years. In 1990, Knight escaped from prison; was later convicted of escape, I.C. § 18-2505; and was sentenced to a unified term of five years, with a minimum period of confinement of two years. The district court ordered Knight's sentence for escape to run consecutive to his previous sentence for robbery.

The determinate portion of Knight's sentence for robbery was scheduled to end on August 29, 1993. The Idaho Department of Corrections assigned that date as the beginning of the determinate portion of Knight's sentence for escape. The indeterminate portion of Knight's sentence for robbery was placed on hold while he served the determinate portion of his sentence for escape. Knight completed the determinate portion of his sentence for escape on August 29, 1995, and the indeterminate portion of his sentence for robbery began to run. Knight was paroled on September 27, 2000, with a full-term release date of August 28, 2007, for his robbery conviction, and August 28, 2010, for his escape conviction. However, Knight's parole was revoked after he absconded from supervision and committed another robbery in 2001. As a consequence, Knight forfeited 131 days spent on parole and his full-term release dates were extended to January 6, 2008, and January 6, 2011, respectively.

Knight filed a petition for writ of habeas corpus, arguing that his constitutional rights were violated when the indeterminate portion of his sentence for robbery was placed on hold while he served the determinate portion of his sentence for escape. He contended that his sentence for escape had to be served consecutive to the sentence for robbery and, pursuant to I.C. §§ 19-2520F and 18-2505(1), could not begin until all other sentences had ended and he had been discharged. After a hearing, the magistrate granted the state's motion for summary judgment dismissing Knight's petition because it is well-settled law that, when consecutive sentences are imposed, the determinate portions must be served before the consecutive, indeterminate portions begin to run. Knight appealed to the district court, which affirmed the dismissal of Knight's petition on the same grounds. Additionally, the district court held that there was no conflict between I.C. §§ 19-2520F, 19-2513, and 18-2505,¹ and that Knight did not

¹ Idaho Code Section 19-2520F provides:

Every person who has been found guilty of a commission of a felony on the grounds of a correctional facility located in this state *shall have the sentence for such offense begin after all previous sentences have ended.*

have a due process right to a hearing before he began serving the determinate portion of his escape sentence. Knight again appeals.

II.

STANDARD OF REVIEW

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *State v. DeWitt*, 145 Idaho 709, 711, 184 P.3d 215, 217 (Ct. App. 2008). We examine the magistrate record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. *Id.* If those findings are so supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision, we affirm the district court's decision as a matter of procedure. *Id.*

The decision to issue a writ of habeas corpus is a matter within the discretion of the court. *Johnson v. State*, 85 Idaho 123, 127, 376 P.2d 704, 706 (1962); *Brennan v. State*, 122 Idaho 911, 914, 841 P.2d 441, 444 (Ct. App. 1992). When we review an exercise of discretion in a habeas corpus proceeding, we conduct a three-tiered inquiry to determine whether the lower court rightly perceived the issue as one of discretion, acted within the boundaries of such discretion,

(Emphasis added). Idaho Code Section 19-2513 provides, in pertinent part:

[I]f consecutive sentences are imposed for multiple offenses, the court shall, if required by statute, direct that the enhancement or each consecutive sentence contain a minimum period of confinement; in such event, *all minimum terms of confinement shall be served before any indeterminate periods of commence to run.*

(Emphasis added). Idaho Code Section 18-2505 provides, in pertinent part:

(1) Every prisoner charged with, convicted of, or on probation for a felony who is confined in any correctional facility, . . . who escapes or attempts to escape . . . , shall be guilty of a felony, and upon conviction thereof, *any such second term of imprisonment shall commence at the time he would otherwise have been discharged.*

(Emphasis added).

and reached its decision by an exercise of reason. *Brennan*, 122 Idaho at 914, 841 P.2d at 444; *Sivak v. Ada County*, 115 Idaho 762, 763, 769 P.2d 1134, 1135 (Ct. App. 1989). If a petitioner is not entitled to relief on an application for a writ of habeas corpus, the decision by the petitioned court to dismiss the application without an evidentiary hearing will be upheld. *Brennan*, 122 Idaho at 917, 841 P.2d at 447. When a court considers matters outside the pleadings on an I.R.C.P. 12(b)(6) motion to dismiss, such motion must be treated as a motion for summary judgment. *Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct. App. 1990).

Summary judgment under I.R.C.P. 56(c) is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, we exercise free review in determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct. App. 1986).

III. ANALYSIS

Knight argues that he should have been discharged from his sentence for robbery before beginning the determinate portion of his sentence for escape. He contends that his sentence for robbery was unconstitutionally extended by two years while it was placed on hold during his service of the determinate portion of his escape sentence. Knight further claims that his sentence for escape had not yet been completed at the time that he was released on parole for his robbery sentence in violation of I.C. § 20-223. Lastly, Knight argues that he was denied his constitutional rights of equal protection and due process.

Under Idaho law, a sentence of imprisonment for a felony generally consists of two parts--the fixed term, which is the minimum period that a defendant must serve before becoming eligible for parole, and a subsequent indeterminate term, during which the defendant may be released on parole. See I.C. § 19-2513. When a defendant has committed multiple offenses, a sentencing court may order that the sentences will be served concurrently or consecutively. I.C. § 18-308. When consecutive sentences have been imposed, a prisoner first serves the fixed term of the first sentence and then the fixed term of the second sentence, followed by the consecutive indeterminate portions of each sentence. I.C. § 19-2513, *Doan v. State*, 132 Idaho 796, 799, 979 P.2d 1154, 1157 (1999). See also IDOC Directive 136.07.02.00 (regarding consecutive sentences, “[m]inimum terms of confinement must be served one (1) after the other and cannot

be served at the same time. An offender becomes parole eligible on all sentences when all minimum terms of confinement have been served”). By statute, the service of a sentence for escape must run consecutive to the sentence the prisoner was serving when he or she escaped. I.C. § 18-2505. *See also Doan*, 132 Idaho at 801, 979 P.2d at 1159; *State v. Mendenhall*, 106 Idaho 388, 393, 679 P.2d 665, 670 (Ct. App. 1984). Thus, the determinate portion of Knight’s sentence for escape had to be served immediately following the determinate portion of his sentence for robbery. This period would then be followed by the consecutive, indeterminate portions of his sentences, respectively. Therefore, the magistrate did not err by dismissing Knight’s petition.

Knight also argues that, according to I.C. §§ 18-2505 and 19-2520F, his sentence for escape could not begin to run until he was discharged from his sentence for robbery or that sentence had otherwise ended. Knight also argues that his robbery sentence was unconstitutionally extended by two years and that the principle of separation of powers was violated. These arguments were proffered by the state in *Doan*, 132 Idaho at 800-03, 979, P.2d 1158-61 and expressly rejected by the Idaho Supreme Court. Furthermore, we have concluded that Knight’s sentence was properly administered. Accordingly, we do not address these arguments further.

Knight further contends that, according to I.C. § 20-223, he could not be paroled on his sentence for robbery before his sentence for escape was completed. Knight cites *Fullmer v. Collard*, 143 Idaho 171, 139 P.3d 773 (Ct. App. 2006). However, Knight fails to argue how *Fullmer* or I.C. § 20-223 implicate error in the way his sentences were calculated in this case. A party waives an issue on appeal if either argument or authority is lacking. *Powell v. Sellers*, 130 Idaho 122, 128, 937 P.2d 434, 440 (Ct. App. 1997). To the extent that Knight argues that his parole was synonymous with pardon or commutation, he is incorrect. *See* I.C. § 20-223(c) (providing that a release on parole shall not be considered as an award of clemency, reduction of sentence, or pardon). Accordingly, we do not address this argument further. We have also reviewed Knight’s other arguments and conclude that they are meritless and do not warrant further discussion.

IV. CONCLUSION

The determinate and indeterminate portions of Knight's sentences for robbery and escape were properly administered. Knight's constitutional rights were not violated. Therefore, the magistrate did not err by summarily dismissing his petition for habeas corpus. Accordingly, the district court's intermediate appellate decision affirming the summary dismissal of Knight's petition for writ of habeas corpus is affirmed. No costs or attorney fees are awarded on appeal.

Chief Judge LANSING and Judge GRATTON, **CONCUR.**